TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 19[illegible]

No. [illegible] 19

HAROLD FAHY, PETITIONER,

vs.

CONNECTICUT.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

PETITION FOR CERTIORARI FILED SEPTEMBER 21, 1962
CERTIORARI GRANTED FEBRUARY 25, 1963

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 449

HAROLD FAHY, PETITIONER,

vs.

CONNECTICUT.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

INDEX

RECORD PRESS, PRINTERS, NEW YORK, N. Y., APRIL 19, 1963

[fol. 1]

IN THE SUPERIOR COURT FOR FAIRFIELD COUNTY STATE OF CONNECTICUT

No. 14,277

STATE,

v.

HAROLD FAHY.

INFORMATION—February 10, 1960

Lorin W. Willis, State's Attorney for Fairfield County accuses Harold Fahy then of Norwalk of the crime of Wilful injury to public property and charges that on the 1st day of February 1960 at Norwalk, in said county, the said Harold Fahy did wilfully injure a public building, in said Norwalk, to wit: the Temple Beth Israel by smearing the same with black paint in offensive and objectionable forms, against the peace and contrary to the form of the statute in such case made and provided.

Dated at Bridgeport, Conn. this 10th day of February, 1960.

Lorin W. Willis, State's Attorney in and for Fairfield County.

IN THE SUPERIOR COURT FOR FAIRFIELD COUNTY

STATE OF CONNECTICUT

DEMURRER—Filed May 24, 1960—and Overruled—May 24, 1960

The defendant demurs generally and specially to the information filed against him and moves the same be quashed and dismissed for the following reasons:

The act charged by the information:

> "The wilful injury to a public building in said Norwalk to wit: The Temple Beth Israel, by smearing the same with black paint in offensive and objectionable forms against the peace and contrary to the statute in such case made and provided"

does not constitute an injury to a public building as provided in this statute and, therefore, does not constitute a violation of the same.

Defendant,
By Cummings & Lockwood, His Attorneys.

Demurrer overruled.

Bogdanski, J.

May 24, 1960.

[fol. 2]

IN THE SUPERIOR COURT FOR FAIRFIELD COUNTY

STATE OF CONNECTICUT

PLEA—June 15, 1960

On June 15, 1960 the accused entered a plea of Not Guilty and elected to be tried by the Court.

IN THE SUPERIOR COURT FOR FAIRFIELD COUNTY

STATE OF CONNECTICUT

MOTION IN ARREST OF JUDGMENT—Filed June 30, 1960

The defendant moves in arrest of judgment in this case on the grounds that the offense charged in the information, to wit:

> "The wilful injury to a public building in said Norwalk to wit: The Temple Beth Israel, by smearing the same with black paint in offensive and objectionable

forms against the peace and contrary to the statute in such case made and provided"

does not constitute an injury to a public building as provided in this statute and, therefore, does not constitute a violation of the same.

Defendant,
By Cummings & Lockwood, His Attorneys.

IN THE SUPERIOR COURT FOR FAIRFIELD COUNTY

STATE OF CONNECTICUT

ORDER DENYING MOTION IN ARREST OF JUDGMENT—
June 30, 1960

The above motion is denied.

Bogdanski, J.

[fol. 3]
IN THE SUPERIOR COURT FOR FAIRFIELD COUNTY, BRIDGEPORT

STATE OF CONNECTICUT

Present, Hon. Joseph W. Bogdanski, Judge.

No. 14,277

STATE,

vs.

HAROLD FAHY.

JUDGMENT

Upon the information of Lorin W. Willis Attorney for the State, within and for said County of Fairfield, charging said Harold Fahy now in the custody of the Sheriff of said County, with the crime of Wilful Injury to Public Property

—sec. 53-45 as amended by Public Act #437 as per information on file.

The prisoner appeared then for plea said "Not Guilty" to said charge and elected to be tried by the court, and after a full hearing a decision of "Guilty" to said charge was rendered.

It is therefore considered by the Court that the prisoner is Guilty of said crime in manner and form as charged in said information.

The Court thereupon sentenced the said prisoner to be confined for the term of sixty (60) days in the County Jail at Bridgeport in said County, and to stand committed until said judgment is complied with.

Date of Sentence June 30, 1960.

By the Court,
Roy H. Ervin, Asst. Clerk.

[fol. 4]

IN THE SUPERIOR COURT FOR FAIRFIELD COUNTY

STATE OF CONNECTICUT

DEFENDANT'S APPEAL—Filed September 1, 1960

In the above entitled action, the defendant, Harold Fahy, appeals to the Supreme Court of Errors from the judgment rendered therein.

Defendant,
By Cummings & Lockwood, His Attorneys.

Clerk's Certificate to foregoing appeal (omitted in printing).

IN THE SUPERIOR COURT FOR FAIRFIELD COUNTY

STATE OF CONNECTICUT

No. 14,278

STATE,

v.

WILLIAM ARNOLD.

INFORMATION—February 10, 1960

Lorin W. Willis, State's Attorney for Fairfield County accuses William Arnold then of Norwalk of the crime of Wilful injury to public property and charges that on the 1st day of February 1960 at Norwalk, in said county, the said William Arnold did wilfully injure a public building, in said Norwalk, to wit: the Temple Beth Israel by smearing the same with black paint in offensive and objectionable forms, against the peace and contrary to the form of the statute in such case made and provided.

Dated at Bridgeport, Conn. this 10th day of February, 1960.

Lorin W. Willis, State's Attorney in and for Fairfield County.

IN THE SUPERIOR COURT FOR FAIRFIELD COUNTY

STATE OF CONNECTICUT

DEMURRER—Filed May 24, 1960—and Overruled—May 24, 1960

The defendant demurs generally and specially to the information filed against him and moves the same be quashed and dismissed for the following reasons:

[fol. 5] The act charged by the information:

> "The wilful injury to a public building in said Norwalk to wit: The Temple Beth Israel, by smearing the same with black paint in offensive and objectionable forms against the peace and contrary to the statute in such case made and provided"

does not constitute an injury to a public building as provided in this statute and, therefore, does not constitute a violation of the same.

Defendant,
By Hirschberg, Pettengill & Strong, His Attorneys.

Demurrer overruled.

Bogdanski, J.

May 24, 1960.

IN THE SUPERIOR COURT FOR FAIRFIELD COUNTY

STATE OF CONNECTICUT

PLEA—June 15, 1960

On June 15, 1960 the accused entered a plea of Not Guilty and elected to be tried by the Court.

IN THE SUPERIOR COURT FOR FAIRFIELD COUNTY

STATE OF CONNECTICUT

MOTION IN ARREST OF JUDGMENT—Filed June 30, 1960

The defendant moves in arrest of judgment in this case on the grounds that the offense charged in the information, to wit:

> "The wilful injury to a public building in said Norwalk to wit: The Temple Beth Israel, by smearing the same with black paint in offensive and objectionable forms against the peace and contrary to the statute in such case made and provided"

does not constitute an injury to a public building as pro-
[fol. 6] vided in this statute and, therefore, does not constitute violation of the same.

Defendant,
By. Hirschberg, Pettengill & Strong, His Attorneys.

IN THE SUPERIOR COURT FOR FAIRFIELD COUNTY

STATE OF CONNECTICUT

ORDER DENYING MOTION IN ARREST OF JUDGMENT—
June 30, 1960

The above motion is denied.

Bogdanski, J.

Dated: June 30, 1960.

Roy H. Ervin, Ass't Clerk.

IN THE SUPERIOR COURT FOR FAIRFIELD COUNTY, BRIDGEPORT

STATE OF CONNECTICUT

Present, Hon. Joseph W. Bogdanski, Judge.

No. 14,278

STATE,

VS.

WILLIAM ARNOLD.

JUDGMENT

Upon the information of Lorin W. Willis Attorney for the State, within and for said County of Fairfield, charging said William Arnold now in the custody of the Sheriff of said County, with the crime of Wilful Injury to Public Property

—sec. 53-45 as amended by public act #437 as per information on file.

The prisoner appeared then for plea said "Not Guilty" to said charge and elected to be tried by the court and after [fol. 7] a full hearing a decision of "Guilty" was rendered to said charge by the court.

It is therefore considered by the Court that the prisoner is Guilty of said crime in manner and form as charged in said information.

The Court thereupon sentenced the said prisoner, to be confined for the term of sixty (60) days in the County Jail at Bridgeport in said County, and to stand committed until said judgment is complied with.

Date of Sentence June 30, 1960.

By the Court,
Roy H. Ervin, Asst. Clerk.

IN THE SUPERIOR COURT FOR FAIRFIELD COUNTY

STATE OF CONNECTICUT

DEFENDANT'S APPEAL—Filed September 2, 1960

In the above entitled action, the defendant, William Arnold, appeals to the Supreme Court of Errors from the judgment rendered therein.

Defendant,
By Hirschberg, Pettengill & Strong, His Attorneys.

* * * * * * *

Clerk's Certificate to foregoing appeal (omitted in printing).

[fol. 8]

IN THE SUPERIOR COURT FOR FAIRFIELD COUNTY

STATE OF CONNECTICUT

No. 14278

September 27, 1960

STATE OF CONNECTICUT,

vs.

WILLIAM ARNOLD.

STIPULATION CONSOLIDATING CASES FOR APPEAL—
Filed September 29, 1960

It is hereby stipulated that this case may be consolidated with State of Connecticut vs. Harold Fahy, No. 14277, for the purposes of appeal to the end that only one request for a finding and draft finding and one assignment of errors need be filed on behalf of both defendants and only one record need be printed.

Plaintiff,
By Lorin W. Willis, State's Attorney for Fairfield County.

Hirschberg, Pettengill & Strong, Counsel for William Arnold.

ORDER APPROVING—October 17, 1960

The foregoing stipulation is approved and the cases ordered consolidated for purposes of appeal.

Bogdanski, Judge.

IN THE SUPERIOR COURT FOR FAIRFIELD COUNTY

STATE OF CONNECTICUT

No. 14,277

STATE,

v.

HAROLD FAHY.

No. 14,278

STATE,

v.

WILLIAM ARNOLD.

REQUEST FOR FINDING—Filed October 1, 1960

Appellants in the above-entitled case respectfully request a finding of facts for an appeal to the Supreme Court of Errors and submit the draft finding hereto annexed.

The questions of law which they desire to have reviewed are:

1. Did the Court err in concluding that the defendants by their conduct, upon all of the evidence, had wilfully [fol. 9] injured a public building within the meaning of Sec. 53-45 of the General Statutes of Connecticut (1958 Revision) as amended by Public Act 437 (1959 Session)?

2. Did the Court err in precluding the defendants from establishing that the police officers searched the premises of the defendant Fahy without a warrant in violation of the Fifth Amendment to the Constitution of the United States and Article I, Section 8 of the Constitution of the State of Connecticut?

3. Did the Court err in permitting Detective Frank Tigano to give his opinion of the material used to paint

the building in question without first requiring him to be qualified as an expert?

4. Did the Court err in overruling the demurrers of the defendants?

5. Did the Court err in denying defendants' motions for acquittal at the end of the State's case?

6. Did the Court err in denying defendants' motion for acquittal at the end of the entire case?

* * * * * * *

Defendant, Harold Fahy, By Cummings & Lockwood.

Defendant, William Arnold, By Hirschberg, Pettengill & Strong.

IN THE SUPERIOR COURT FOR FAIRFIELD COUNTY

STATE OF CONNECTICUT

FINDING—Filed October 25, 1960

First

The following facts are found:

[fol. 10] 1. On the first day of February, 1960, a Jewish house of worship known as Synagogue Beth Israel was located on Concord Street in the City of Norwalk.

2. Between the hours of 4:00 and 5:00 a.m. on that morning, swastikas had been painted with black paint on the top step leading to the entrance to the synagogue, one on the side of the step and one on the casing between two basement windows.

3. About 4:40 a.m., Officer Lindwall, a Norwalk police officer, saw an automobile without headlights operating on a public highway in Norwalk about a block away from the synagogue.

4. Although the police officer signalled this car to a stop, he was obliged to pursue it about one mile before the car was halted.

5. The officer found the two defendants in the car and the defendant Fahy was driving.

6. The officer questioned the defendants about their reason for being out at that hour and was told that they had been out for coffee at a diner and were headed back toward their home.

7. The defendant Fahy had no license to operate a motor vehicle and the officer insisted that the defendant Arnold drive the car from that point to their home.

8. In searching the car in which the defendants were riding, the officer found a can of black paint and a two-inch paint brush.

9. The officer followed the defendants while they drove home.

10. Neither of the defendants appeared at any time to be intoxicated or under the influence of liquor.

11. Later on the same morning, Officer Lindwall learned of the painting of the swastikas upon the synagogue and reported that he had seen the defendants in that vicinity.

[fol. 11] 12. Police officers then went to the home where the defendants were living and placed them under arrest.

13. The police found the same can of black paint and the brush in the car which the defendants had been operating when stopped by Officer Lindwall earlier in the morning.

14. The two-inch paint brush matched the markings made with black paint upon the synagogue.

15. Both defendants admitted that they were the ones who had painted the swastikas on the synagogue and they admitted that the paint and the brush found in the car had been used by them for that purpose.

Second

The court reached the following conclusions:

16. Both defendants were guilty as charged.

Third

The following rulings were made on the trial:

17. Officer Lindwall testified that he went to the Fahy home on Wilson Point in South Norwalk before obtaining a warrant for the arrest of either defendant and before he had obtained a search warrant to search the premises, and entered the garage of the Fahy home which is situated under the house. He then removed the paint and paint brush allegedly used to apply paint to the Temple. Defendants' counsel was precluded by the Court upon the State's objection from pursuing his examination of Officer Lindwall in an effort to establish the unlawful search and seizure of the paint and paint brush.

18. Detective Frank Tigano was permitted, over objection, to give his opinion concerning the material used to paint the Temple without any foundation being laid for such questioning and without qualifying Detective Tigano as an expert.

[fol. 12] 19. Detective Frank Tigano did testify that the swastikas had been marked upon the synagogue with a type of black paint. Subsequently, both defendants admitted that they had used the black paint found in their car for that purpose.

Fourth

The appellants made the following claims of law respecting the judgment to be rendered upon which the court ruled as hereinafter stated:

20. The information fails to charge an offense.

21. The competent, credible evidence offered by the State failed to establish the guilt of the defendants of the crime charged beyond a reasonable doubt.

The court overruled same.

Bogdanski, J.

IN THE SUPERIOR COURT FOR FAIRFIELD COUNTY

STATE OF CONNECTICUT

ASSIGNMENT OF ERRORS—Filed November 12, 1960

A.

Errors apparent on the face of the record:

The Court erred:

1. In overruling the demurrer to each of the informations.

2. In denying the motion in arrest of judgment filed by each defendant.

B.

Errors in the conduct of the trial:

The Court erred:

[fol. 13] 1. In finding that: "The defendant Fahy had no license to operate a motor vehicle * * *," being a part of paragraph 7 of said finding, without evidence.

2. In reaching the conclusion set forth in paragraph 16 of the finding when the facts set forth in the finding do not support a finding that the defendants are guilty as charged in the informations.

3. In overruling the claims of law stated in paragraphs 20 and 21 of the finding.

4. In making the ruling set forth in paragraphs 17, 18 and 19 of the finding.

C.

The Court erred in concluding upon all of the evidence that the defendants were guilty of the crime charged in the information beyond a reasonable doubt.

Defendant, Harold Fahy, By Cummings & Lockwood, His Attorneys.

Defendant, William Arnold, By Hirschberg, Pettengill & Strong, His Attorneys.

Corrections refused—

Nov. 14, 1960.

Bogdanski, J.

[fol. 14] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 15]

[Stamps—Date of Supreme Court Judgment June 26, 1962—Decision Announced July 10, 1962]

IN SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

April Term, 1962

STATE OF CONNECTICUT,

v.

HAROLD FAHY.

STATE OF CONNECTICUT,

v.

WILLIAM ARNOLD.

OPINION

Informations charging the defendants with the crime of wilful injury to public property, brought to the Superior Court in Fairfield County and tried to the court, Bogdanski, J.; judgment of guilty in both cases and appeal by the defendants. *No error.*

Francis J. McNamara, Jr., for the appellant (defendant in the first case).

John J. Sullivan, for the appellant (defendant in the second case).

John F. McGowan, assistant state's attorney, with whom, on the brief, was Otto J. Saur, state's attorney, for the appellee (state).

BALDWIN, C. J. The defendants were tried on separate informations charging wilful injury to public property under General Statutes § 53-45, as amended by No. 437, § 1, of the 1959 Public Acts. The factual and legal issues in the cases are identical, and the cases were tried together to the court without a jury. The court found the defendants guilty as charged and sentenced each of them to sixty days in jail. They have appealed.

The trial court found the following facts: On February 1, 1960, between the hours of 4 and 5 a.m., swastikas were painted with black paint on the steps and on the casing between two basement windows of the Temple Beth Israel, on Concord Street in Norwalk. About 4:40 a.m., Osborn Lindwall, a Norwalk police officer, saw an automobile, without its headlights on, being operated on a public highway about a block away from this synagogue. He signaled the car to stop but was obliged to pursue it in his police car for about a mile before it was halted. The defendant Fahy was driving the car, and the defendant Arnold was a passenger. Lindwall questioned them about their reason for being out at that hour, and they told him that they had been to a diner for coffee and were going home. Fahy had no license to operate a motor vehicle, and the officer insisted that Arnold drive. The officer checked the car and found a jar of black paint and a two-inch paint brush under the front seat. He followed the car to Fahy's home. Later the same morning, he learned of the painting of the swastikas on the synagogue and reported that he had seen the defendants in that vicinity. Police officers then went to Fahy's home and placed both defendants under arrest. They found the jar of black paint and the brush in the car in which the defendants had been riding when they were stopped earlier in the morning. The two-inch paint brush matched the markings made with black paint on the synagogue. The defendants admitted that they had painted the swastikas on the synagogue and that the paint found in the car had been used for that purpose.

The defendants claim; first, that the informations do not charge an offense under General Statutes § 53-45, as amended by Public Acts 1959, No. 437.[1] They concede that the synagogue is a public building but contend that the painting of the swastikas on it does not constitute a wilful injury within the intent of the statute. Their argument is predicated on the legislative history of this act. As originally enacted in 1832, the pertinent portion provided that, "if any person shall wilfully and maliciously injure or deface any house of public worship, school-house, or other public building," he should be subject to penalties. Public Acts 1832, c. 9, § 2; Statutes, 1838, p. 182, § 2. This wording [fol. 16] continued without material alteration until the Revision of 1875, when the words "or deface" were omitted, among other changes. General Statutes, Rev. 1875, p. 500, § 3. Since 1875, the wording of the phrase with which we are concerned has remained unchanged. The defendants claim that by the omission of the words "or deface" the legislature intended to treat the word "deface" as distinct from the word "injure." They argue that although the painting of swastikas on a building may be a defacement, it is not an injury to the building. A contrary holding is to be found in *Vaughn* v. *May*, 217 Mo. App. 613, 625, 274 S.W. 969.

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[1] Prior to the action of the 1959 legislature, the statute read: "Sec. 53-45. INJURY TO PUBLIC BUILDINGS, FURNITURE OR VOTING BOOTHS. Any person who wilfully injures any public building or wilfully injures or carries away any part of the heating plant or equipment or furniture in and belonging to any such building or wilfully defaces or injures a voting booth or compartment shall be fined not more than one hundred dollars or imprisoned not more than six months or both."

The 1959 public act, effective June 11, 1959, was as follows: "No. 437. AN ACT CONCERNING INJURY TO PUBLIC BUILDINGS. Section 1. Section 53-45 of the general statutes is repealed and the following is substituted in lieu thereof: (a) Any person who wilfully injures any public building or wilfully places a bomb or other explosive device in any such building shall be fined not more than five thousand dollars or imprisoned not more than twenty years or both. (b) Any person who wilfully injures or carries away any part of the heating plant or equipment or furniture in and belonging to any such building or wilfully defaces or injures a voting booth or compartment shall be fined not more than one hundred dollars or imprisoned not more than six months or both."

In seeking to ascertain the intent of legislation, "[i]t is presumed that changes in the language of a statute made when it is incorporated into a revision are not intended to alter its meaning and effect, and this is particularly true of the Revision of 1875." *Castagnola* v. *Fatool*, 136 Conn. 462, 468, 72 A.2d 479, and cases cited. It is therefore to be assumed that the revisers in 1875 considered that the word "injure" conveyed the meaning of "injure or deface." The words have been judicially interpreted as synonymous. *Saffell* v. *State*, 113 Ark. 97, 99, 167 S.W. 483. The 1959 public act (No. 437) by its terms purported to repeal § 53-45 of the 1958 Revision but at the same time again adopted the language of the 1875 Revision which is material to us. Whether a new provision is in the form of a new enactment repealing the old, as in this case, or the form of an amendment of the old is immaterial and depends on the preference of the draftsman. *Simborski* v. *Wheeler*, 121 Conn. 195, 200, 183 A. 688. The 1959 public act was, in effect, merely an amendment to § 53-45 of the General Statutes. See Prefatory Statement, Public Acts 1959. An amendatory act is presumed not to change the existing law further than is expressly declared or necessarily implied. *Norwalk* v. *Daniele*, 143 Conn. 85, 89, 119 A.2d 732. Nothing in the 1959 act either expressly declares or necessarily implies a change in the meaning of the language under scrutiny. The informations therefore charged an offense under § 53-45 as amended by No. 437, § 1, of the 1959 Public Acts.

The defendants assign error in the alleged refusal of the trial court to allow them to pursue their cross-examination of Officer Lindwall in an effort to establish the unlawful search and seizure of a paint jar and paint brush from Fahy's car when it was in a garage under the house where Fahy resided. After the date of the judgments, June 30, 1960, and while these appeals were pending, the Supreme Court of the United States announced its decision in *Mapp* v. *Ohio*, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081. This decision abrogated our prior law that relevant evidence, though obtained by unreasonable search and seizure in violation of the federal constitution, was admissible in evidence in our state courts. *State* v. *DelVecchio*, 149 Conn. (23 Conn. L.J., No. 31, p. 9); see *State* v. *Carol*, 120 Conn.

573, 575, 181 A. 714; *Pickett* v. *Marcucci's Liquors*, 112 Conn. 169, 173, 151 A. 526; *State* v. *Reynolds*, 101 Conn. 224, 233, 125 A. 636; *State* v. *Magnano*, 97 Conn. 543, 117 A. 550; *State* v. *Griswold*, 67 Conn. 290, 305, 34 A. 1046. The rule of *Mapp* v. *Ohio*, supra, applies to a pending appeal. *State* v. *DelVecchio*, supra.

The finding concerning the ruling on evidence assigned as error, as corrected by the trial court subsequent to the decision in *Mapp* v. *Ohio*, supra, and before argument before us, discloses the following: Lindwall testified that he went to the Fahy residence before obtaining a search warrant to search the premises and that he entered the garage and removed the paint jar and the paint brush from the car. The defendants sought to examine Lindwall in order to establish that the paint and the brush were unlawfully seized, in violation of their rights under the fourth and fourteenth amendments to the federal constitution and article first, § 8, of the constitution of this state. The court precluded the defendants from pursuing this examination, on objection by the state that any illegal seizure of the paint jar and the brush did not prevent their admission in evidence in a state court. In argument before us on April 3, 1962, the question was raised by the state whether the corrected finding was sufficient for us fully to consider the error claimed. After the argument, the defendants moved that a certified transcript of the evidence taken at the trial be made a part of the record on appeal. The state acquiesced in the motion. Since the evidential ruling involved a matter as to which there had been a change in the law after the case was tried, the appeal taken and the original finding made, we granted the motion. *State* v. *Kreske*, 130 Conn. 558, 562, 36 A.2d 389.

An examination of the transcript discloses the following: The state, in its case in chief, produced William Tarsi of the Norwalk police department. He testified that on February 1, 1960, at about 6:55 a.m., he observed swastikas painted in black paint on the synagogue, and that they had not been there when he observed the building at 4 a.m. that morning. The state then called Officer Lindwall, who testified to the facts already recited as having been found by the court, as follows: At about 4:40 a.m., he saw the Fahy

car being operated, without lights on, about a block from [fol. 17] the synagogue. He pursued the car until it stopped, and he questioned the defendants, who were riding in it. He observed a jar of paint and a brush in the car but did not take them into his custody. He allowed the defendants to proceed to Fahy's home and followed them until their car turned into the driveway.

The transcript further discloses the following evidence: When Lindwall learned, about 7:30 a.m., that swastikas had been painted on the synagogue, he went to Fahy's house, entered the garage and took the jar of paint and the brush from the car. On cross-examination, Lindwall testified that he entered the garage, that he removed the jar of paint and the brush from the car in the garage, and that he had no search warrant. Thereupon, he was asked whether he had applied for a search warrant, and the state objected. The court sustained the objection and refused to allow any further inquiry, on the ground, in effect, that the lack of a search warrant was immaterial.

Although the defendants objected to the admission of the paint jar and the brush when they were first offered, the objection was not at that time based on an illegal search and seizure, and the court was not asked to rule on their admissibility in the light of any such claim. See *Casalo* v. *Claro*, 147 Conn. 625, 629, 165 A.2d 153; *State* v. *DeGennaro*, 147 Conn. 296, 304, 160 A.2d 480. The reason for the requirement that there be timely objection and exception and also an adequate statement of the claims on which the objection is based, in compliance with the rules of procedure (Practice Book § 155), are well stated in a concurring opinion by Judge Van Voorhis in *People* v. *Friola*, 11 N.Y.2d 157, 160, 182 N.E.2d 100, a case which also involved the application of the *Mapp* decision, supra: "Courts are continually reconsidering old precedents and, if no objection or equivalent was required here, objection would never be necessary to raise a question of law where it is urged that some former decisional law be changed. That would not accord with the purposes of the rule requiring an objection, which is to apprise the court and the adversary of the position being taken when the ruling is made. It is important to know at the time that rulings are being challenged so that

additional evidence or argument may be presented and the point considered by the trial court with knowledge that the rule is being contested."

The specific ruling of which the defendants complain is the refusal of the court to allow them to cross-examine Officer Lindwall to show that the search and the seizure were illegal. The transcript reveals that much of the necessary evidence was already in the case and, further, that the defendants had ample opportunity to, and in fact did, elicit testimony from Lindwall on cross-examination adequate to lay a foundation for their claim. While the defendants failed to make proper objection to the admission of the evidence, they attempted later in the trial to raise the issue of the constitutionality of the search and the seizure, and we will consider it. See *People* v. *O'Neill*, 11 N.Y.2d 148, 152, 182 N.E.2d 95.

Security of one's privacy against arbitrary intrusion by the police is guaranteed by the federal constitution as well as by the constitution of this state. U.S. Const. Amend. IV, XIV, § 1; Conn. Const. Art. I § 8; *Wolf* v. *Colorado*, 338 U.S. 25, 27, 69 S. Ct. 1359, 93 L. Ed. 1782. This protection extends to the premises where an unreasonable search is made. *Go-Bart Importing Co.* v. *United States*, 282 U.S. 344, 357, 51 S. Ct. 153, 75 L. Ed. 374. Probable cause for a belief that certain articles subject to seizure are in a dwelling cannot in and of itself justify a search without a warrant. *Jones* v. *United States*, 357 U.S. 493, 497, 78 S. Ct. 1253, 2 L. Ed. 2d 1514; *Agnello* v. *United States*, 269 U.S. 20, 33, 46 S. Ct. 4, 70 L. Ed. 145. There are no exceptional circumstances in this case which would warrant the search and seizure here—circumstances such as the necessity for immediate seizure lest the criminals flee, or the articles be transported out of reach, before a lawful warrant could issue. See *United States* v. *Jeffers*, 342 U.S. 48, 52, 72 S. Ct. 93, 96 L. Ed. 59; *Johnson* v. *United States*, 333 U.S. 10, 15, 68 S. Ct. 367, 92 L. Ed. 436; *Carroll* v. *United States*, 267 U.S. 132, 151, 45 S. Ct. 280, 69 L. Ed. 543. The search took place about two hours before the arrest and cannot be justified as incidental to it. *Rios* v. *United States*, 364 U.S. 253, 261, 80 S. Ct. 1431, 4 L. Ed. 2d 1688; *United States* v. *Di Re*, 332 U.S. 581, 595, 68 S. Ct. 222, 92 L. Ed. 210; *State* v.

DelVecchio, 149 Conn. (23 Conn. L.J., No. 31, p. 9). The facts show that the officers had ample opportunity for procuring a search warrant without employing the method of illegal entry. See *Johnson* v. *United States*, supra. We conclude, therefore, that the search and the seizure by Lindwall at 7:30 a.m. were unlawful, since they were without a warrant and were not made in connection with a lawful arrest at that time. Under the rule of *Mapp* v. *Ohio*, supra, 655, the evidence seized was inadmissible.

We come now to the question whether a new trial should be ordered. That depends on whether proper objection was made to the evidence claimed to have been erroneously admitted and whether the evidence was sufficiently conse-[fol. 18] quential to affect the finding of guilt. We have already noted that the objection was insufficient to raise the constitutional question; nevertheless, we have considered that question on the basis of the court's ruling denying the defendants the right to cross-examine the police officer. The defendants do not claim, nor, as the transcript shows, could they claim, that the illegal search and seizure induced their admissions or confessions. Their claim is that, "[h]ad they been able to preclude the admission of the illegally seized evidence, [their] confessions would not have been admissible," under the rule of *State* v. *Doucette*, 147 Conn. 95, 98, 157 A.2d 487, because there was, apart from the confessions, insufficient evidence of the corpus delicti, that is, that the crime charged had been committed by someone. In other words, their claim is that the state, in order to prove that a crime had been committed, had to rely solely on the admission in evidence of the paint jar and the brush. The answer to that claim is that there was ample evidence besides the defendants' confessions and the jar of paint and the brush to prove that swastikas had been painted on the synagogue between the hours of 4 and 5 o'clock on the morning of February 1, 1960. This was sufficient to establish that the crime charged had been committed by someone. The confessions were not inadmissible on the ground claimed, and no other ground of inadmissibility is advanced.

The paint jar and the brush, which were exhibits, were, at most, cumulative. The transcript of the evidence of the state's case, in chief, discloses overwhelming evidence of

the guilt of the defendants. They were observed a block from the scene of the crime at approximately the time when it was committed, riding in an automobile without lights, and were brought to a stop only after a police officer had pursued them for upwards of a mile. When the police later in the morning came with warrants to arrest them, they admitted their guilt at once and attempted to excuse their conduct as a "prank." Both later freely confessed. We are not required to grant a new trial if we are "of the opinion . . . errors [at the trial] have not materially injured the appellant." General Statutes § 52-265; *State* v. *Goldberger*, 118 Conn. 444, 454, 173 A. 216; *Carroll* v. *Arnold*, 107 Conn. 535, 544, 141 A. 657; *State* v. *Stevens*, 65 Conn. 93, 95, 31 A. 496; 1 Wigmore, Evidence (3d Ed.) § 21. Under the circumstances of this case, a new trial is unwarranted.

There is no error.

In this opinion the other judges concurred.

The foregoing is a true copy of the original opinion as filed with the reporter of judicial decisions; but the opinion is subject to alteration and addition by the judges until printed in the official reports.

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Reporter

[fol. 19]

IN SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

On Appeal from the Superior Court for Fairfield County

Nos. 5080-5081

STATE OF CONNECTICUT,

v.

HAROLD FAHY.

STATE OF CONNECTICUT,

v.

WILLIAM ARNOLD.

JUDGMENT—June 26, 1962

This appeal by the defendants, claiming error in the process, record and judgment, and in the proceedings and decision of the Court on questions of law arising in the trial, as may appear in the certified transcript of record and finding of facts on file in this Court, was allowed by the Superior Court, for Fairfield County on the 1st day of September, 1960, and came to this Court at its session at Hartford, on the first Tuesday of December, 1960; and thence by continuance to the present term, when the parties appeared and were fully heard.

And now this Court finds that in the record, judgment and proceedings of said Superior Court, there is no error.

It is therefore considered and adjudged that there is no error.

By the Court,

Date of Judgment June 26, 1962

Decision announced July 10, 1962

J. Leo Campana, Clerk.

[fol. 20] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 21]

SUPREME COURT OF THE UNITED STATES

No. 449, October Term, 1962

HAROLD FAHY, Petitioner,

vs.

CONNECTICUT.

ORDER ALLOWING CERTIORARI—February 25, 1963

The petition herein for a writ of certiorari to the Supreme Court of Errors of the State of Connecticut is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.